

MONTANA LEGISLATIVE HISTORY

Chapter 369 19 85

Bill H 228 S _____ Original bill & history ☒ C

H. Committee on Human Services + Aging

Hearing Date(s) Jan 23 ☒ C

Jan 25 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Jan 30 ☒ C

S. Committee on Public H&W, Welfare Safety

Hearing Date(s) Mar 18 ☒ C

Mar 23 ☒ C

_____ ☐ C

_____ ☐ C

Mar 23 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE FINAL STATUS

1/26 BILL KILLED

HB 227 INTRODUCED BY WINSLOW, SCHULTZ, ET AL.
NO SOLICITATION OF INFO. WITHIN POLLING PLACE AS TO
HOW ELECTOR VOTED

1/17	INTRODUCED		
1/17	REFERRED TO STATE ADMINISTRATION		
1/24	HEARING		
1/25	COMMITTEE REPORT-BILL PASS AS AMENDED		
1/26	2ND READING PASS	87	1
1/29	3RD READING PASS	97	3

	TRANSMITTED TO SENATE		
1/30	REFERRED TO STATE ADMINISTRATION		
3/08	HEARING		
3/12	COMMITTEE REPORT-BILL CONCURRED		
3/15	2ND READING CONCURRED	44	4
3/18	3RD READING CONCURRED	42	7

	RETURNED TO HOUSE		
3/23	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/26	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 192	EFFECTIVE DATE:	10/01/85

HB 228 INTRODUCED BY WINSLOW, CHRISTIAENS, ET AL.
LIVING WILLS

1/17	INTRODUCED		
1/17	REFERRED TO HUMAN SERVICES & AGING		
1/23	HEARING		
1/30	COMMITTEE REPORT-BILL PASS AS AMENDED		
2/02	2ND READING PASS AS AMENDED	93	2
2/04	3RD READING PASS	97	3

	TRANSMITTED TO SENATE		
2/07	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/18	HEARING		
3/23	COMMITTEE REPORT-BILL CONCURRED		
3/27	2ND READING CONCURRED	50	0
3/29	3RD READING CONCURRED	49	0

	RETURNED TO HOUSE		
4/04	SIGNED BY SPEAKER		
4/04	SIGNED BY PRESIDENT		
4/04	TRANSMITTED TO GOVERNOR		
4/08	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 369	EFFECTIVE DATE:	10/01/85

HB 229 INTRODUCED BY SWIFT, THOFT, ET AL.
EXEMPT MINK UNDER 11 MONTHS OF AGE FROM TAXATION

1/17	INTRODUCED		
1/17	REFERRED TO TAXATION		
1/18	FISCAL NOTE REQUESTED		
1/25	FISCAL NOTE RECEIVED		

HOUSE BILL NO. 228

INTRODUCED BY WINSLOW, CHRISTIAENS, MANNING,
FRITZ, BERGENE, BRANDEWIE, SCHULTZ, COBB, HARP,
SCHYE, QUILICI, MENAHAN, HAGER, B. BROWN,
HART, NEUMAN, J. BROWN, MILES, D. BROWN,
REGAN, KEENAN, O'HARA, H. HAMMOND, JACK MOORE

IN THE HOUSE

January 17, 1985	Introduced and referred to Committee on Human Services and Aging.
January 30, 1985	Committee recommend bill do pass as amended. Report adopted.
January 31, 1985	Bill printed and placed on members' desks.
February 2, 1985	Second reading, do pass as amended. Correctly engrossed.
February 4, 1985	Third reading, passed. Ayes, 97; Noes, 3. Transmitted to Senate.

IN THE SENATE

February 7, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 23, 1985	Committee recommend bill be concurrent in. Report adopted.
March 27, 1985	Second reading, concurred in.
March 29, 1985	Third reading, concurred in. Ayes, 49; Noes, 0. Returned to House.

IN THE HOUSE

March 29, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *Repeal* *HOUSE* BILL NO. *228* *Alford*
 2 INTRODUCED BY *Winters* *Christina* *Richard* *Monahan* *Fitz*
 3 *Bergene* *Brown* *Eduly* *1000* *HART* *Big* *Edwin*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE *Monahan*
 5 PREPARATION AND IMPLEMENTATION OF A DECLARATION INSTRUCTING *Hart*
 6 AN ADULT'S PHYSICIAN TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING *Bob Brown*
 7 PROCEDURES IF THE PERSON IS IN A TERMINAL CONDITION AND IS *700 Hart*
 8 UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS;
 9 PROVIDING METHODS FOR REVOCATION OF THE DECLARATION;
 10 LIMITING THE LIABILITY OF PHYSICIANS AND HEALTH CARE
 11 PROVIDERS WHO IMPLEMENT THE DECLARATION; AND ESTABLISHING
 12 CRIMINAL PENALTIES FOR FAILING TO COMPLY WITH A DECLARATION
 13 AND FOR OTHER RELATED VIOLATIONS."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Definitions. As used in [this act], the
 17 following definitions apply:

18 (1) "Attending physician" means the physician selected
 19 by or assigned to the patient, who has primary
 20 responsibility for the treatment and care of the patient.

21 (2) "Declaration" means a document executed in
 22 accordance with the requirements of [section 2].

23 (3) "Health care provider" means a person who is
 24 licensed or otherwise authorized by the law of this state to
 25 administer health care in the ordinary course of business or

1 practice of a profession.

2 (4) "Life-sustaining procedure" means any medical
 3 procedure or intervention that, when administered to a
 4 qualified patient, will serve only to prolong the dying
 5 process.

6 (5) "Physician" means a person licensed under Title
 7 37, chapter 3, to practice medicine in this state.

8 (6) "Qualified patient" means a patient who has
 9 executed a declaration in accordance with [this act] and who
 10 has been determined by the attending physician to be in a
 11 terminal condition.

12 (7) "Terminal condition" means an incurable or
 13 irreversible condition that, without the administration of
 14 life-sustaining procedures, will, in the opinion of the
 15 attending physician, result in death within a relatively
 16 short time.

17 Section 2. Declaration relating to use of
 18 life-sustaining procedures. (1) Any competent adult may
 19 execute a declaration at any time directing that
 20 life-sustaining procedures be withheld or withdrawn.
 21 However, the declaration is effective only if the
 22 declarant's condition is determined to be terminal and the
 23 declarant is not able to make treatment decisions. The
 24 declaration must be signed by the declarant, or another at
 25 the declarant's direction, in the presence of two witnesses.

A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with [this act] and is valid.

(2) It is the responsibility of the declarant to notify his physician of the declaration. A physician or other health care provider who is provided a copy of the declaration shall make it a part of the declarant's medical records.

(3) A declaration may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that will cause my death within a relatively short time, it is my desire that my life not be prolonged by administration of life-sustaining procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw procedures that merely prolong the dying process and are not necessary to my comfort or freedom from pain.

Signed this _____ day of _____, ____.

Signature _____

City, County, and State of Residence _____

The declarant is known to me and voluntarily signed this document in my presence.

Witness _____

Address _____

Witness _____

Address _____

Section 3. Revocation of declaration. (1) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition. A revocation is effective only as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated.

(2) The attending physician or health care provider shall make the revocation a part of the declarant's medical record.

Section 4. Recording determination of terminal condition and content of declaration. When an attending physician who has been notified of the existence and content of a declaration determines that the declarant is in a terminal condition, the physician shall record that determination and the content of the declaration in the declarant's medical record.

Section 5. Treatment of qualified patients. (1) A qualified patient has the right to make decisions regarding

1 use of life-sustaining procedures if the patient is able to
2 do so. If a qualified patient is not able to make such
3 decisions, the declaration governs decisions regarding use
4 of life-sustaining procedures.

5 (2) [This act] does not prohibit the application of
6 any medical procedure or intervention, including the
7 provision of nutrition and hydration, considered necessary
8 to provide comfort care or to alleviate pain.

9 (3) The declaration of a qualified patient known to
10 the attending physician to be pregnant must be given no
11 effect if it is probable that the fetus could develop to the
12 point of live birth with continued application of
13 life-sustaining procedures.

14 Section 6. Transfer of patients. (1) An attending
15 physician who is unwilling to comply with the requirements
16 of [section 4] or who is unwilling to comply with the
17 declaration of a qualified patient in accordance with
18 [section 5] shall take all reasonable steps to transfer the
19 declarant to another physician.

20 (2) If the policies of a health care facility preclude
21 compliance with the declaration of a qualified patient under
22 [this act], that facility shall take all reasonable steps to
23 transfer the patient to a facility in which the provisions
24 of [this act] can be carried out.

25 Section 7. Immunities. (1) In the absence of actual

1 notice of the revocation of a declaration, the following,
2 while acting in accordance with the requirements of [this
3 act], are not subject to civil or criminal liability or
4 guilty of unprofessional conduct:

5 (a) a physician who causes the withholding or
6 withdrawal of life-sustaining procedures from a qualified
7 patient;

8 (b) a person who participates in the withholding or
9 withdrawal of life-sustaining procedures under the direction
10 or with the authorization of a physician;

11 (c) the health care facility in which the withholding
12 or withdrawal occurs.

13 (2) A physician is not subject to civil or criminal
14 liability for actions under [this act] that are in accord
15 with reasonable medical standards.

16 Section 8. Penalties. (1) A physician who willfully
17 fails to transfer in accordance with [section 6] is guilty
18 of a misdemeanor punishable by a fine not to exceed \$500 or
19 imprisonment in the county jail for a term not to exceed 1
20 year, or both.

21 (2) A physician who willfully fails to record the
22 determination of terminal condition in accordance with
23 [section 4] is guilty of a misdemeanor punishable by a fine
24 not to exceed \$500 or imprisonment in the county jail for a
25 term not to exceed 1 year, or both.

(3) A person who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) A person who falsifies or forges the declaration of another or purposely conceals or withholds personal knowledge of a revocation as provided in [section 3], with the intent to cause a withholding or withdrawal of life-sustaining procedures, is guilty of a misdemeanor punishable by a fine not to exceed \$500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

Section 9. Reservations on effect of [act]. (1) Death resulting from the withholding or withdrawal of life-sustaining procedures pursuant to a declaration and in accordance with [this act] is not, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to [section 2] does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. No policy of life insurance is legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient,

notwithstanding any term of the policy to the contrary.

(3) No physician, health care facility, or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may require any person to execute a declaration as a condition for being insured for or receiving health care services.

(4) [This act] creates no presumption concerning the intention of an individual who has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining procedures in the event of a terminal condition.

(5) Nothing in [this act] increases or decreases the right of a patient to make decisions regarding use of life-sustaining procedures if the patient is able to do so or impairs or supersedes any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of [this act] are cumulative.

(6) [This act] does not authorize or approve mercy killing or euthanasia.

Section 10. Recognition of declarations executed in other states. A declaration executed in a manner substantially similar to [section 2] in another state and in compliance with the law of that state is effective for

1 purposes of [this act].

2 Section 11. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

-End-

STATUS SHEET49th LEGISLATIVE SESSIONCOMMITTEE ON HUMAN SERVICES AND AGING

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 44	1/7	1/9	1/9	1/9					
HB 46	1/7	1/9	1/9		1/9				
HB 49	1/7	1/16	1/16		1/16				
HB 52	1/7	1/9	1/9	1/9					
HB 113	1/7	1/11	1/11	1/11					
HB 114	1/7	1/16	1/16	1/16					
HB 116	1/7	1/16	1/16	1/16					
HB 119	1/7	1/11	1/11	1/11					
HB 141	1/11	1/16	1/16	1/16					
HB 142	1/11	1/16	1/16	1/16					
HB 165	1/14	1/21	1/21			1/21			
HB 169	1/14	1/25	1/25	1/25					
HB 182	1/14	1/18	1/18	1/18					
HB 183	1/15	2/06	2/06	2/06					
HB 202	1/16	1/21	1/21	1/21					
HB 228	1/17	1/25	1/25			1/25			

Use a separate sheet for Senate, House Bills, and Resolutions

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 23, 1985

The meeting of the Human Services and Aging Committee was called to order by Chairperson Nancy Keenan on January 23, 1985 at 3:00 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Gould who was excused by the Chairperson.

HOUSE BILL NO. 235: Hearing commenced on House Bill No. 235. Representative Ray Peck, District #15, sponsor of the bill indicated that an act to require an anesthesiologist or anesthesiologist to administer and monitor general anesthetic in dental procedures was needed. Representative Peck added that he did have amendments to propose. Peck felt that House Bill No. 290, which is the authority for the Board of Dentistry to make rules and regulations is really not related, although he felt that the Committee may hear that these bills are related. The authority to make rules by the Board of Dentistry is something very different than the concern that we have with House Bill No. 235. Dr. Peck testified as to the case of two parties who will speak as proponents today. Dr. Peck referred the Committee to the ABC News of September 29, 1983. The program dealt with the administration of a general anesthetic by people who do not not have specific training in the area of anesthesiology. Careless or indiscriminate administration of an anesthetic is not being done. There may, however, be a tendency for people to do certain procedures that are beyond their skill and training. Representative Peck indicated that he had spent several hours on the telephone talking with dentists, oral surgeons and physicians during the last six weeks about the matter. Representative Peck has found none of them that will say it is a proper procedure for any practitioner to administer a general anesthetic by himself. Generally, the legislators do not put into law, restrictions on the medical profession. According to recent surveys, there have been fifty deaths attributed to anesthetics over the last two decades and the dilemma is getting worse.

Proponents to this bill included Clair Clark of Lewistown. His daughter received serious brain damage as a result of the administration of an anesthetic in a dental office in Billings. Greg Kegel of Havre talked of the death of his younger brother which resulted because of misuse of a general anesthetic. Representative Bob Bachini and Representative Rapp-Svrcek both support the bill; Jo Shipman added her support.

Chairperson Keenan then closed the hearing on House Bill No. 235 and the Committee recessed for five minutes.

HOUSE BILL NO. 228: Hearing commenced on House Bill No. 228. Representative Cal Winslow of District #89, sponsor of the bill, stated an act to authorize the preparation and implementation of a declaration instructing an adult's physician to withhold or withdraw life-sustaining procedures if the person is in a terminal condition and is unable to participate in medical treatment decisions; providing methods for revocation of the declaration; limiting the liability of physicians and health care providers who implement the declaration; and establishing criminal penalties for failing to comply with a declaration and for other related violations was needed. A synopsis of the bill was discussed by Representative Winslow. We have seen or heard about people who have been kept alive by machines when there is no chance of recovery; the aged, those in serious automobile accidents or victims of drug overdose. These people often suffer the complications which leave them in a vegetable state with no hope of recovery. Breathing and other life functions are performed by machines. The cost may be staggering. The emotional stress on the loved ones may be unbearable. Yet, modern medicine keeps this patient alive. The doctor has a solemn obligation to do everything in his power to preserve life. If he does not do everything, perform every test, undertake every available measure, he may be sued by the relatives. There is now a growing demand for the right of officials to participate in decisions affecting their lives and their deaths and to have this decision respected by medical professions. Twenty-three states have adopted death laws and there are strong indications that many others will follow soon. This process has had the assistance of every important interest group affected by this legislation. This bill has been supported by the American Hospital Association, American Bar Association, The Society for the Right to Die, and the Catholic Health Association of the United States. Most of the response to this bill was from senior citizens who are facing the reality of death and are requesting the right to die with dignity. They do not want to end their lives in a comatose state or months on end on a machine were the comments of Representative Winslow.

18

Proponents to this bill were Charles Briggs, Office of the Governor who reiterated a letter sent to Governor Schwinden regarding the support of this bill. Doug Olson, Elderly Human Services Developer, Office of the Governor, indicated his support and is attached hereto as Exhibit 11. Henry Siberious of Kalispell supports this bill as did Joe Upshaw of the American Association of Retired People. Molly Monroe indicated her support and is attached hereto as Exhibit 12. Representative Marian Hanson supports this bill as does Wade Wilkerson of the Senior Citizens Advocate. Representative Harry Fritz, acting and speaking on behalf of Vi Thompson extended his support. Jerry Loendorf, an attorney representing the American Medical Association supports this bill as did Earl Riley of the National Association of Retired Employees indicating his support as displayed in Exhibit 13. Chad Smith, Montana Hospital Association and a Helena attorney, indicated that the hospitals in Montana see the need for this type of legislation. Walter Taylor of Missoula, a member of the Legacy Legislature and the interim committee supports this bill. Sam Ryan, Montana Senior Citizens also supports this bill as does Ed Sheehy representing the National Association of Retired Public Employees said that a simpler execution of the living will was needed. Sue Winegartner, representing the Montana Health Care Association supports this bill. Senator Chris Christiaens of Great Falls, a supporter, also worked extensively on the drafting of this legislation. There were no further proponents or opponents to this bill.

Representative Winslow closed the discussion on this bill by indicating that 65% of the health care is spent on the last year of life.

Questions were raised by Representative Connolly. She questioned the court challenges. Representative Bradley questioned the amendments and Representative Wallin questioned as to whether this bill could eventually result in euthanasia. Representative Simon questioned the writing of the bill and Representative Keenan questioned as to whether an amendment on witnesses was needed.

There being no further discussion on House Bill No. 228, the hearing was closed.

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 23, 1985

NAME	PRESENT	ABSENT	EXCUSED
NANCY KEENAN	X		
BUDD GOULD			X
TONI BERGENE	X		
DOROTHY BRADLEY	X		
JAN BROWN	X		
BUD CAMPBELL	X		
BEN COHEN	X		
MARY ELLEN CONNELLY	X		
PAULA DARKO	X		
BOB GILBERT	X		
STELLA JEAN HANSEN	X		
MARIAN HANSON	X		
MARJORIE HART	X		
HARRIET HAYNE	X		
JOHN PHILLIPS	X		
BRUCE SIMON	X		
STEVE WALDRON	X		
NORM WALLIN	X		

SENIORS' OFFICE
LEGAL AND OMBUDSMAN SERVICES

TED SCHWINDEN, GOVERNOR

P.O. BOX 232
CAPITOL STATION

STATE OF MONTANA

(406) 444-4676
1-(800) 332-2272

HELENA, MONTANA 59620

January 23, 1985

Members,
Committee on Human Services
& Aging
House of Representatives
Montana 49th Legislative Session
State Capitol
Helena, Montana 59620

re: House Bill 228
"Living Will"

Dear Representatives:

I serve as the attorney-elderly legal services developer with the Seniors' Office of Legal & Ombudsman Services and I am appearing here today at the request of Rep. Cal Winslow to offer testimony in support of House Bill 228. My position is a federally mandated and funded position under the federal Older Americans Act with one of its goals to assist senior citizens in their advocacy efforts. One of my responsibilities has been to work with senior citizens in their planning of their "Legacy Legislature". This past summer at the request of Mrs. Vi Thomson a legacy legislator from Missoula I drafted Legacy Legislature Bill No. 18 to formally recognize the concept of a "Living Will" in Montana.

As many of you know, a "Living Will" allows a competent adult to express his or her intentions regarding their desire to be kept alive by artificial means should they at some future date suffer from a terminal condition due to illness or injury. Twenty-three (23) states (including the District of Columbia) have already recognized in their laws the concept of a living will. The 1984 Montana Legacy Legislature composed of Montana's senior citizens also supported this concept.

House Bill 228 as introduced by Rep. Winslow and Senator Christians and numerous other legislators is almost verbatim the November 16, 1984 draft of the "Rights of the Terminally Ill Act" as proposed by the National Conference of Commissioners on Uniform State Laws. It includes most of the provisions of the Legacy Legislature Bill but there are several distinctions that are worth noting.

Testimony of Doug Olson, Atty.
Seniors' Office of Legal & Ombud. Svcs.
Before House Committee on Human Services
re: House Bill 228
Page 2
January 23, 1985

The Legacy Legislature Bill #18 required that two physicians had to certify that a declarant suffered from a terminal condition before his declaration would take effect whereas House Bill 228 requires only one (1) physician. House Bill 228 should in this regard be supported for due to the rural nature of most of Montana it may be impossible in some parts of the state to obtain the certification of more than one physician.

The Legacy Legislature Bill #18 also required that witnesses to a declaration had to meet certain qualifications:

1. They could not be related to the declarant by blood or marriage;
2. They could not be entitled to any portion of the declarant's estate under any will or by the Montana intestate laws if there was no will;
3. They could not be directly financially responsible for the declarant's medical care;
4. In those situations in which the declarant was physically incapable of signing due to a disability and someone signed the living will for the declarant, the signator for the declarant could not also serve as a witness.

House Bill 228 imposes no conditions on witnesses to a declaration in keeping with the draft uniform state law on the rights of the terminally ill. It should be noted that the draft upon which HB 228 was based has not been formally adopted by the Commissioners on Uniform Laws and that it will not be voted on until August, 1985. The Committee draft does note that its proposal that there be no conditions placed on witnesses is not supported by the legislation that most of the states have adopted. "The draft does not require witnesses to meet any specific qualifications, and as such, departs quite significantly from the statutory law established in almost every state." [See COMMENT, pg. 7, November 16, 1984, Draft, Rights of the Terminally Ill Act].

Because of the concern for the potential for fraudulent or fake "Living Wills" being executed by persons who might inherit from a person's estate, I would urge the Committee to consider amending HB 228 to impose some qualifications on who might serve as a witness. I would propose for your consideration that only one (1) of the two (2) persons who would witness the declaration may be related to the declarant by blood or marriage. Many states expressly preclude all relatives by blood or marriage from serving as witnesses but by allowing one of the witnesses to be a relative there may be an occasion in which someone who is terminally ill would be able to execute a living will whereas he might otherwise not be able to do so.

16

Testimony of Doug Olson, Atty.
Seniors' Office of Legal & Ombud. Svcs.
Before House Comm. on Human Services
re: House Bill 228
Page 3
January 23, 1985

A number of states that have enacted "Living Will" statutes have placed a time-limit on the effectiveness of these documents once they have been executed, for example 5 years in the case of Idaho and Georgia and 7 years in California. My recommendation after reviewing this issue with the New York based "Society for the Right to Die" is not to place a time-limitation in Montana's law on this point. There are occasions in which a person who executes a valid living will may suffer from a disease such as Alzheimer's that would preclude him from re-executing a new living will if Montana imposed a 5 or 7 year time-limit on their effectiveness. As an alternative to statutorily placing a time-limit on living wills' effectiveness, I would recommend that in the sample declaration listed in the bill that a statement be added to the effect that: "This declaration [shall be valid until revoked or shall expire in _____ years from the date of its execution]."

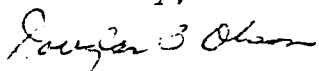
I would also urge your committee to consider including a "Short Title" section in the bill such as, "This Act (sections 1 through _____) may be cited as, "The Montana Living Will Act".

Under the penalty section, I would recommend that in Section 8, paragraph (4), that a statement be included to expressly state that this penalty (for those who are found to have falsified or forged a declaration) is in addition to any other penalties that may be applicable under the criminal code. This is being suggested for it is possible that in some cases a charge of conspiracy to commit deliberate homicide may be applicable in these cases.

Finally, I would urge your consideration of an amendment to include a section in the bill recognizing an "effective date" of prior to October 1, 1985. You may also wish to include a statement that recognizes the validity of "Living Wills" that were executed prior to the effective date of this bill as long as they meet the minimum conditions required in this bill.

Thank you for an opportunity to address this issue before and I would be happy to answer any questions you may have after the public testimony on this bill has been completed. I am attaching some suggested amendments for your consideration as well as some articles on this issue that may be of interest.

Sincerely,


Douglas B. Olson
Attorney
Seniors' Office of Legal &
Ombudsman Services

Proposed Amendments to HB 228

"Living Will"

from: Doug Olson, Atty.

Seniors' Office of Legal & Ombud. Svcs.

January 23, 1985

1. Page 1

Following: Line 15

Insert: "NEW SECTION. Section 1. Short Title. Sections 1
through 13 may be cited as the "Montana Living Will
Act."

Renumber: Subsequent sections

2. Page 2

Following: Kine 25

Insert: "Only one of the two witnesses may be related to the
declarant by blood or marriage."

3. Page 3, line 20

Following: "pain."

Insert: "It is my intention that this declaration [shall be valid
until revoked by me; or, shall expire in ____ years from
the date of its execution]."

4. Page 7

Following: Line 13

Insert: "This penalty is in addition to any other penalties that
may be imposed pursuant to Title 45."

5. Page 9

Following: Line 7

Insert: "NEW SECTION. Section 13. This act is effective on

[choices:

- (a) passage and approval. or
- (b) July 1, 1985.]"

Please note that changes or amendments in the bill's title may also
be necessary.

WITNESS STATEMENT

Name Holly Muro Committee On Human Services
Address 1207 Winne, Helena Date 1-23-85 Agm
Representing Self Support ✓
Bill No. 228 Oppose _____
Amend ✓

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

TESTIMONY BEFORE THE HOUSE
HUMAN SERVICES AND AGING COMMITTEE

Wednesday, January 23, 1985

RE: HB 228

BY: Molly Munro, Concerned Citizen

I am Molly Munro and I appear here today as a concerned citizen. It is possible, at the present time, in the state of Montana for a person to draw up a declaration as is described in this bill. However, there would be no obligation for the physician to follow it; no immunity for the physician who did follow it; and no requirement that the physician transfer the person to the care of another physician if he/she found he could not follow the dictates of the declaration.

I, personally, feel that it is imperative that this law be passed to provide a legal and effective means for those wishing to make such a declaration.

I wish that this law had been in effect several years ago. My father-in-law, aged 83, and diagnosed as a victim of Alzheimer's disease, is no longer able to make such a declaration. Consequently, within a few short years or sooner, his family may be faced with the decision of whether or not his life should be maintained by life support systems. Had he been able to make this decision for himself, this could have been avoided.

A few years ago, I had to take my mother, who is 89 years old, to the Mayo Clinic for care. My family is fairly close knit, but I spent a lot of time, while there, on the phone justifying to my sister and two brothers the decisions made by my mother and me regarding her treatment and care--and this was no life-and-death situation.

So I feel that this bill addresses a situation that can be handled before it develops into a time of high emotional stress for the persons involved and their families.

However, I cannot urge you strongly enough, to adopt the proposed amendment concerning qualifications of witnesses to the declaration. This must be an integral part of this bill. Family members and relatives must be afforded this protection.

I also encourage you to make this bill effective immediately, or by July 1, 1985, at the very latest. I can see no good reason for delaying it further.

One last suggestion--a very minor one--but one which I think would strengthen the wording of the sentence involved. On line 1, page 5 delete "the" and insert "that" so that the sentence reads, "...use of life sustaining procedures if that patient is able to do so."

Thank you for your time and for allowing me the opportunity to speak on behalf of HB 228.

TESTIMONY BEFORE THE HOUSE HUMAN SERVICES COMMITTEE

1/23/85

My name is Earl Reilly and I am a member of the Montana Senior Citizens Association. I am here today in support of HB 228. This legislation enables each of us to make a choice while we are competent, able and without pressure or duress to determine a course of action to be followed when faced with a terminal affliction.

The purpose, of course, is to eliminate needless suffering, needless expense and needless trauma inherently present in these situations.

We, however, want to be assured that proper safeguards are in place to make sure that the maker of each will is making a free choice, the will is properly witnessed and notarized or whatever may be necessary to make the "living will" a legally accepted document. We want to further ensure that the conflict of interest problems are properly addressed, that is, that health-care providers and persons who are direct beneficiaries not be allowed to witness the document.

We understand that the "Living Will" is now legal in 22 states and Washington, D.C.

We would appreciate your favorable consideration in this matter.

January 23, 1985

TESTIMONY OF ELSIE FOX, MILES CITY, MONTANA IN FAVOR OF "LIVING WILL"

Twenty-two states and the District of Columbia have enacted laws that recognize a person's advance written instructions to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

I and many other Senior Citizens in Custer County feel very strongly on the issue of "Living Will". We have seen instances where there have not been living wills, and the family is under undue but tremendous pressure to agree "to anything that can be done to keep Grandma (for instance) alive": and the result is that Grandma is propped up, not knowing anything, and the bills run into many thousands of dollars to no avail. The "Living Will" is only valid when it is signed while the person involved has all his or her faculties, therefore danger of abuse is removed.

At a recent discussion on the priority of current legislation at our Senior Citizen meeting in Miles City, Living Will was considered to have No. 2 priority.

Therefore, I strongly urge you to lend your support to this legislation.

Elsie Fox

ELSIE FOX
P.O. Box 222
MILES CITY, 59301
(406) 232-1841

VISITOR'S REGISTER

HOUSE Human Services and Aging COMMITTEEBILL HB 228DATE 1/23/85SPONSOR Winslow

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Molly Munro	Helena	Self	✓	
Jacques Shaw	Helena	AARP/Leg. Legislation	✓	
Walter J. Taylor	Missoula	Legacy Legislation	✓	
Robert DDS	HAURE	Mont. Dental Assoc		
John M. Lohman	B.			
Matthew M. Brown	Helena			✓
Charles W. W. W.	Bozeman			✓
Samuel Brown	Helena	M.S.C.A.	✓	
Clare Briceindine	Clancy			
Alonk B. B.				
Dorothy Olson	Helena	2ndly, legal serv Seniors office Legd serv.	✓	
Ed Sheehy	1731 5th Helena	NARPE	✓	
Harold Brown	Kayak	Self	✓	
ELSIE FOX	MILES CITY	SELF	X	
Everett VanDer Eeden	Billings	Self	X No Pro. Form	
Yu H. N.	Livingston	SELF	X No Pro. Form	
William J. J.	Helena	Montana Hosp. & Health	✓	
Daniel J. J.	Missoula	HD 56	✓	
Chad Smith	Helena	Mont Hosp. Admin	✓	
Jerome J.	Helena	mt. Hosp. Admin		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE COMMITTEE

BILL 228

DATE _____

SPONSOR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
HUMAN SERVICES AND AGING COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 25, 1985

The meeting of the Human Services and Aging Committee was called to order by Chairperson Nancy Keenan on January 25, 1985 at 3:00 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Representative Gould who was excused by Chairperson Keenan.

HOUSE BILL NO. 169: Hearing commenced on House Bill No. 169. Representative Gene Donaldson, District #43, sponsor of the bill indicated that an act extending handicapped persons' special parking privileges to 100 percent disabled veterans was needed. This bill would allow recipients of this license plate to park in those designated areas which are allowed for the handicapped. Currently, persons displaying this license plate cannot park in handicapped areas. Basically, what this bill does, in summary, is to allow these people to purchase a \$5.00 license plate with the disabled veteran insignia and parking in handicapped spaces in public and private lots would be permissible.

Proponents included George Poston, Vice-Commander of the Disabled American Veterans for the Montana State Disabled American Veterans Association. Only veterans who are 100% disabled will be authorized to acquire disabled plates. Mr. Poston indicated that these people had made a great sacrifice. Only persons using the handicapped plates will be eligible to park in handicapped zones and with the proposed bill, disabled veterans would also be able to park in these designated areas.

There were no further proponents or opponents to House Bill No. 169 the hearing was closed.

Sponsor of the bill closed and questions were then raised by Representative Connolly. She indicated that disabled veterans are eligible to receive parking permits. Representative Wallin asked the stipulations necessary to receive a disabled veterans license plate. Representative Gilbert questioned the amount of disability required and Representative Bergene asked if there were a recognition also of a Disabled American Veteran.

There being no further discussion, hearing was closed on House Bill No. 169.

EXECUTIVE SESSION

ACTION ON HOUSE BILL NO. 228: Representative Hayne made a motion that House Bill No. 228, AS AMENDED DO PASS. Representative Darko seconded the motion. Amendments to this bill are as follows:

1) Page 1

Following: Line 15

Insert: "NEW SECTION. Section 1. Short Title.
[Sections 1 through 11] may be cited as the
'Montana Living Will Act'."

Renumber: Subsequent sections.

A motion was made by Representative Bradley, seconded by Representative Phillips and was unanimously decided DO PASS. Questions were raised by Committee members and researcher Gomez made explanation.

2) Page 2

Following: Line 25

Insert: "Only one of the two witnesses may be related
to the declarant."

A motion was made by Representative Cohen and seconded by Representative Bergene and was voted DO PASS. Representatives Bradley, Gilbert and Simon voted No. After further discussion, Representative Simon reconsidered his motion to DO PASS.

3) Page 3, line 20

Following: "pain."

Insert: "It is my intention that this declaration
shall be valid until revoked by me."

A motion was made by Representative Cohen and seconded by Representative Waldron and was voted DO PASS by roll call vote and is attached hereto.

4) Page 8, line 21

Following: "killing"

Strike: "or euthanasia"

A motion was made by Representative Cohen and seconded by Representative Bergene to DO PASS.

Additional amendments which did not pass were:

1) Page 7

Following: Line 13

Insert: "This penalty is in addition to any other
penalties that may be imposed pursuant to
Title 45."

Discussion followed. It was indicated by the staff researcher that this amendment seemed to duplicate existing law found in sections 46-11-501 through 46-11-505, MCA, that permits prosecution and punishment when the same transaction constitutes more than one offense under Title 45. Motion was made by Representative Phillips and seconded and was voted DO NOT PASS. A roll call vote is attached. Questions were raised by the Committee and Doug Olson of the Governor's Office explained.

2) Page 9

Following: Line 7

Insert: "NEW SECTION. Section 13. This act is effective on [choices:
(a) passage and approval. or
(b) July 1, 1985.]".

Following an explanation that an effective date should not be included in the bill because it might deprive the public sufficient notice and an opportunity to be apprised of the contents of the bill, motion was made by Representative Waldron and seconded and was voted DO NOT PASS.

3) Page 4, line 9, 10, 11

Following: "effective"

Strike: remainder of sentence up to "physician."

Discussion following among Committee members and researcher, Gomez explained the effects of this amendment. Gomez explained the purpose of the existing language in the bill. He indicated that the bill, as written, would permit a person working under the supervision of the attending physician to act independently to halt the process that would terminate sustain life-procedures if the declarant somehow communicated an intent to revoke the declaration. It was said that there have been cases in other states where life-sustaining procedures were in the process of being withdrawn or terminated when the declarant would suddenly gasp for air and make motions indicating that perhaps he did not want the declaration implemented. The researcher said that a health care provider or nurse cannot act on their own under the current policy established in most hospitals. A health care provider or nurse works under the supervision of the physician and can not act independently to administer or withhold medication or care to a patient. Hence, it was said that the present language was needed to provide persons working in the hospital the authority to discontinue efforts to terminate the life-sustaining procedure if there was a possibility the declarant wished to revoke the living will.

27

Representative Bergene indicated that it is correct that hospital policy does not afford a nurse or other medical personnel authority to act on their own in the care of a patient.

4) Page 2, line 25

Following: "two"

Insert: "ADULT"

It was explained to the committee by the staff researcher that this amendment is based on similar qualifications established for witnesses to wills under Section 72-2-305, MCA, that prohibits a witness from being a beneficiary of the will. In addition, it was pointed out that no witness qualification was provided in the draft of this bill because the bill was modeled after a draft bill written by the National Conference of Commissioners on Uniform State Laws, which contained no such witness qualifications. It was explained that the Commissioners on Uniform State Laws did not include witness qualifications in the draft of the uniform law on living wills, because they believed a legal determination by the physician would be necessary to determine whether the witnesses to a living will declaration satisfied statutory requirements for witnesses. In addition, the Commissioners believed that a living wills' law should not be so complicated so as to make it for a person desiring to make a living will. It was reported that the attorney on the Legislative Council who drafted the bill concurred with the Commissioners, as did Representative Cal Winslow, the sponsor of the bill. As a result it was recommended that no amendments be passed that would establish witness qualifications.

5) Page 2, line 25

Following: "witnesses."

Insert:

"(a) The witnesses may not be:

(i) the person who signed the declaration on behalf of and at the direction of the person making the declaration;

(ii) related to the declarant by blood or marriage;

(iii) entitled to any portion of the estate of the declarant according to the laws of intestate succession of this state or under any will of the declarant or codicil thereto; or

(iv) directly financially responsible for declarant's medical care."

See explanation of 4) above.

6) Page 3, line 1

Prior to: "A physician"

Insert: "(b)"

See explanation of 4) above.

7) Page 3, line 24 through line 25

Strike: Lines 24 through line 25 in their entirety

Insert: "The declarant is personally known to me and I believe him or her to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am not related to the declarant by blood or marriage, entitled to any portion of the estate of the declarant according to the laws of intestate succession or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care."

A motion was moved, seconded to DO NOT PASS. No action was considered after passing the witness qualification. It was pointed out that this amendment was inconsistent with the requirements for witnesses previously approved by the Committee.

ACTION ON HOUSE BILL NO. 169: Representative Cohen made a motion that House Bill No. 169 DO PASS. Representative Hayne seconded the motion and the bill was unanimously voted to DO PASS.

ACTION ON HOUSE BILL NO. 165: Representative Darko made a motion that House Bill No. 165 DO PASS. Representative Brown seconded the motion and it was unanimously voted to DO PASS AS AMENDED WITH A STATEMENT OF INTENT. After further discussion, Chairperson Keenan stated that because of the question still arising out of this passage, a subcommittee would be formed or further action would be announced at our next meeting.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 5:21 p.m.



NANCY KEENAN

STANDING COMMITTEE REPORT

January 30

1985

Page 1 of 2

MR. Speaker

We, your committee on Human Services and Aging

having had under consideration House Bill No. 228

first reading copy (white)
color

Living wills

Respectfully report as follows: That House Bill No. 228

Amendments attached

**AND AS AMENDED
DO PASS**

Human Services and Aging Committee
House Bill No. 223

- 1) Page 1
Following: Line 15
Insert: "NEW SECTION. Section 1. Short Title.
[Sections 1 through 11] may be cited as the
'Montana Living Will Act'."
Renumber: Subsequent sections.
- 2) Page 2
Following: Line 25
Insert: "Only one of the two witnesses may be related
to the declarant."
- 3) Page 3, line 20
Following: "pain."
Insert: "It is my intention that this declaration shall
be valid until revoked by me."
- 4) Page 8, line 21
Following: "killing"
Strike: "or euthanasia"
- 5) Renumber internal references:
"2" to "3" (page 1, line 22)
"4" to "5" (page 5, line 16)
"5" to "6" (page 5, line 13)
"6" to "7" (page 6, line 17)
"4" to "5" (page 6, line 23)
"1" to "4" (page 7, line 9)
"2" to "3" (page 7, line 20)
"2" to "3" (page 8, line 24)

AND AS AMENDED
DO PASS

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 25, 1985

NAME	PRESENT	ABSENT	EXCUSED
NANCY KEENAN	X		
BUDD GOULD		X	X
TONI BERGENE	X		
DOROTHY BRADLEY	X		
JAN BROWN	X		
BUD CAMPBELL	X		
BEN COHEN	X		
MARY ELLEN CONNELLY	X		
PAULA DARKO	X		
BOB GILBERT	X		
STELLA JEAN HANSEN	X		
MARIAN HANSON	X		
MARJORIE HART	X		
HARRIET HAYNE	X		
JOHN PHILLIPS	X		
BRUCE SIMON	X		
STEVE WALDRON	X		
NORM WALLIN	X		

(Type in committee name, committee members' names, and names of secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

HOUSE COMMITTEE HUMAN SERVICES AND AGING

DATE January 25, 1985 House Bill No. 228 Time 3:34 p.m.

NAME	YES	NO
Nancy Keenan		X
Bud Gould		
Toni Bergene	X	
Dorothy Bradley		X
Jan Brown	X	
Bud Campbell		X
Ben Cohen	X	
Mary Ellen Connelly	X	
Paula Darko	X	
Bob Gilbert		X
Stella Jean Hansen	X	
Marian Hanson		X
Marjorie Hart	X	
Harriet Hayne		X
John Phillips		X
Bruce Simon		X
Steve Waldron	X	
Norm Wallin		X

Alberta Strachan
Secretary

Nancy Keenan
Chairman

Motion: Page 7

Following: Line 13

Insert: "This penalty is in addition to any other
penalties that may be imposed pursuant to
Title 45."

(Include enough information on motion -- put with yellow copy of committee report.)

CHAIRMAN--JACOBSON, JUDY
 NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: M-W-F

TIME: 12:30-2:30 P.M.

SECRETARY-GRAVELEY, ELAINE

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0189 REAM, BOB	1/29	2/08	3/06 HAZARDOUS WASTE TRANSPORTER AND GENERATOR RULES	CONCUR		3-6
HB0202 WALDRON, STEVE	1/28	2/08	3/06 REMOVING LIMITATION ON MENTAL HEALTH CENTER FUNDING	CONCUR		3-6
HB0214 MILLER, RON	2/07	3/18	3/23 REGISTRATION OF SPEECH PATHOLOGY AND AUDIOLOGY AIDES	CONCUR		3-23
HB0228 WINSLOW, CAL	2/07	3/18	3/23 LIVING WILLS	CONCUR		3-23
HB0235 PECK, RAY	2/21	3/22	3/27 3/28 REQUIRE ANESTHESIOLOGIST TO ADMINISTER GENERAL ANESTHESIA DURING DENTAL ACTS	CONCUR AS AMENDED		3-27
HB0259 KEENAN, NANCY	2/11	3/18	3/23 PROVIDER SANCTIONS - COUNTIES WITH STATE-ASSUMED WELFARE PROGRAMS	CONCUR		3-23
HB0270 MARKS, ROBERT L. (BOB)	2/07		CREATING LEG. COMM. ON HEALTH INSURANCE FOR RETIRED PUBLIC EMPLOYEES			
HB0280 BERGENE, TONI R.	2/04	3/15	3/18 PHARMACY LICENSE REVOCATION FOR VIOLATION OF FEDERAL ACT	TABLED		
HB0289 MARKS, ROBERT L. (BOB)	2/07	3/08	BOULDER RIVER SCHOOL AND HOSPITAL RENAMED MONTANA DEVELOPMENTAL CENTER	CONCUR		3-8
HB0358 KADAS, MIKE	2/12	3/15	3/18 TO CREATE A MISSING CHILDREN INFORMATION PROGRAM WITHIN DEPT. OF JUSTICE	ADVERSE REPORT		3-18
HB0465 HANSEN, STELLA JEAN	2/14	3/06	3/08 3/13 REQUIRING COUNTIES TO MAINTAIN RECORDS ON LANDFILL LOCATIONS AND CONTENTS	ADVERSE REPORT		3-16

HOUSE BILL NO. 228

INTRODUCED BY WINSLOW, CHRISTIAENS, R. MANNING,
FRITZ, BERGENE, BRANDEWIE, SCHULTZ, COBB, HARP,
SCHYE, QUILICI, MENAHAN, HAGER, B. BROWN,
HART, NEUMAN, J. BROWN, MILES, D. BROWN,
REGAN, KEENAN, O'HARA, H. HAMMOND, JACK MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
PREPARATION AND IMPLEMENTATION OF A DECLARATION INSTRUCTING
AN ADULT'S PHYSICIAN TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING
PROCEDURES IF THE PERSON IS IN A TERMINAL CONDITION AND IS
UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS;
PROVIDING METHODS FOR REVOCATION OF THE DECLARATION;
LIMITING THE LIABILITY OF PHYSICIANS AND HEALTH CARE
PROVIDERS WHO IMPLEMENT THE DECLARATION; AND ESTABLISHING
CRIMINAL PENALTIES FOR FAILING TO COMPLY WITH A DECLARATION
AND FOR OTHER RELATED VIOLATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE IS A NEW MCA SECTION THAT READS:

Section 1. Short title. [Sections 1 through 11] may be
cited as the "Montana Living Will Act".

Section 2. Definitions. As used in [this act], the
following definitions apply:

(1) "Attending physician" means the physician selected

by or assigned to the patient, who has primary
responsibility for the treatment and care of the patient.

(2) "Declaration" means a document executed in
accordance with the requirements of [section 2 3].

(3) "Health care provider" means a person who is
licensed or otherwise authorized by the law of this state to
administer health care in the ordinary course of business or
practice of a profession.

(4) "Life-sustaining procedure" means any medical
procedure or intervention that, when administered to a
qualified patient, will serve only to prolong the dying
process.

(5) "Physician" means a person licensed under Title
37, chapter 3, to practice medicine in this state.

(6) "Qualified patient" means a patient who has
executed a declaration in accordance with [this act] and who
has been determined by the attending physician to be in a
terminal condition.

(7) "Terminal condition" means an incurable or
irreversible condition that, without the administration of
life-sustaining procedures, will, in the opinion of the
attending physician, result in death within a relatively
short time.

Section 3. Declaration relating to use of
life-sustaining procedures. (1) Any competent adult may

1 execute a declaration at any time directing that
 2 life-sustaining procedures be withheld or withdrawn.
 3 However, the declaration is effective only if the
 4 declarant's condition is determined to be terminal and the
 5 declarant is not able to make treatment decisions. The
 6 declaration must be signed by the declarant, or another at
 7 the declarant's direction, in the presence of two witnesses.
 8 ~~ONLY ONE OF THE TWO WITNESSES MAY BE RELATED TO THE~~
 9 ~~DECLARANT.~~ A physician or health care provider may presume,
 10 in the absence of actual notice to the contrary, that the
 11 declaration complies with [this act] and is valid.

12 (2) It is the responsibility of the declarant to
 13 notify his physician of the declaration. A physician or
 14 other health care provider who is provided a copy of the
 15 declaration shall make it a part of the declarant's medical
 16 records.

17 (3) A declaration may, but need not, be in the
 18 following form:

19 DECLARATION

20 If I should have an incurable or irreversible condition
 21 that will cause my death within a relatively short time, it
 22 is my desire that my life not be prolonged by administration
 23 of life-sustaining procedures. If my condition is terminal
 24 and I am unable to participate in decisions regarding my
 25 medical treatment, I direct my attending physician to

1 withhold or withdraw procedures that merely prolong the
 2 dying process and are not necessary to my comfort or freedom
 3 from pain. IT IS MY INTENTION THAT THIS DECLARATION SHALL BE
 4 VALID UNTIL REVOKED BY ME.

5 Signed this _____ day of _____, ____.

6 Signature _____

7 City, County, and State of Residence _____

8 The declarant is known to me and voluntarily signed
 9 this document in my presence.

10 Witness _____

11 Address _____

12 Witness _____

13 Address _____

14 Section 4. Revocation of declaration. (1) A
 15 declaration may be revoked at any time and in any manner by
 16 which the declarant is able to communicate his intent to
 17 revoke, without regard to mental or physical condition. A
 18 revocation is effective only as to the attending physician
 19 or any health care provider acting under the guidance of
 20 that physician upon communication to the physician or health
 21 care provider by the declarant or by another to whom the
 22 revocation was communicated.

23 (2) The attending physician or health care provider
 24 shall make the revocation a part of the declarant's medical
 25 record.

1 Section 5. Recording determination of terminal
2 condition and content of declaration. When an attending
3 physician who has been notified of the existence and content
4 of a declaration determines that the declarant is in a
5 terminal condition, the physician shall record that
6 determination and the content of the declaration in the
7 declarant's medical record.

8 Section 6. Treatment of qualified patients. (1) A
9 qualified patient has the right to make decisions regarding
10 use of life-sustaining procedures if the patient is able to
11 do so. If a qualified patient is not able to make such
12 decisions, the declaration governs decisions regarding use
13 of life-sustaining procedures.

14 (2) [This act] does not prohibit the application of
15 any medical procedure or intervention, including the
16 provision of nutrition and hydration, considered necessary
17 to provide comfort care or to alleviate pain.

18 (3) The declaration of a qualified patient known to
19 the attending physician to be pregnant must be given no
20 effect if it is probable that the fetus could develop to the
21 point of live birth with continued application of
22 life-sustaining procedures.

23 Section 7. Transfer of patients. (1) An attending
24 physician who is unwilling to comply with the requirements
25 of [section 4 5] or who is unwilling to comply with the

1 declaration of a qualified patient in accordance with
2 [section 5 6] shall take all reasonable steps to transfer
3 the declarant to another physician.

4 (2) If the policies of a health care facility preclude
5 compliance with the declaration of a qualified patient under
6 [this act], that facility shall take all reasonable steps to
7 transfer the patient to a facility in which the provisions
8 of [this act] can be carried out.

9 Section 8. Immunities. (1) In the absence of actual
10 notice of the revocation of a declaration, the following,
11 while acting in accordance with the requirements of [this
12 act], are not subject to civil or criminal liability or
13 guilty of unprofessional conduct:

14 (a) a physician who causes the withholding or
15 withdrawal of life-sustaining procedures from a qualified
16 patient;

17 (b) a person who participates in the withholding or
18 withdrawal of life-sustaining procedures under the direction
19 or with the authorization of a physician;

20 (c) the health care facility in which the withholding
21 or withdrawal occurs.

22 (2) A physician is not subject to civil or criminal
23 liability for actions under [this act] that are in accord
24 with reasonable medical standards.

25 Section 9. Penalties. (1) A physician who willfully

1 fails to transfer in accordance with [section 6 7] is guilty
2 of a misdemeanor punishable by a fine not to exceed \$500 or
3 imprisonment in the county jail for a term not to exceed 1
4 year, or both.

5 (2) A physician who willfully fails to record the
6 determination of terminal condition in accordance with
7 [section 4 5] is guilty of a misdemeanor punishable by a
8 fine not to exceed \$500 or imprisonment in the county jail
9 for a term not to exceed 1 year, or both.

10 (3) A person who purposely conceals, cancels, defaces,
11 or obliterates the declaration of another without the
12 declarant's consent or who falsifies or forges a revocation
13 of the declaration of another is guilty of a misdemeanor
14 punishable by a fine not to exceed \$500 or imprisonment in
15 the county jail for a term not to exceed 1 year, or both.

16 (4) A person who falsifies or forges the declaration
17 of another or purposely conceals or withholds personal
18 knowledge of a revocation as provided in [section 3 4], with
19 the intent to cause a withholding or withdrawal of
20 life-sustaining procedures, is guilty of a misdemeanor
21 punishable by a fine not to exceed \$500 or imprisonment in
22 the county jail for a term not to exceed 1 year, or both.

23 Section 10. Reservations on effect of [act].

24 (1) Death resulting from the withholding or withdrawal of
25 life-sustaining procedures pursuant to a declaration and in

1 accordance with [this act] is not, for any purpose, a
2 suicide or homicide.

3 (2) The making of a declaration pursuant to [section 2
4 3] does not affect in any manner the sale, procurement, or
5 issuance of any policy of life insurance, nor does it modify
6 the terms of an existing policy of life insurance. No policy
7 of life insurance is legally impaired or invalidated in any
8 manner by the withholding or withdrawal of life-sustaining
9 procedures from an insured qualified patient,
10 notwithstanding any term of the policy to the contrary.

11 (3) No physician, health care facility, or other
12 health care provider and no health care service plan,
13 insurer issuing disability insurance, self-insured employee
14 welfare benefit plan, or nonprofit hospital plan may require
15 any person to execute a declaration as a condition for being
16 insured for or receiving health care services.

17 (4) [This act] creates no presumption concerning the
18 intention of an individual who has not executed a
19 declaration with respect to the use, withholding, or
20 withdrawal of life-sustaining procedures in the event of a
21 terminal condition.

22 (5) Nothing in [this act] increases or decreases the
23 right of a patient to make decisions regarding use of
24 life-sustaining procedures if the patient is able to do so
25 or impairs or supersedes any right or responsibility that

1 any person has to effect the withholding or withdrawal of
2 medical care in any lawful manner. In that respect, the
3 provisions of [this act] are cumulative.

4 (6) [This act] does not authorize or approve mercy
5 killing ~~or-euthanasia~~.

6 Section 11. Recognition of declarations executed in
7 other states. A declaration executed in a manner
8 substantially similar to [section 2 3] in another state and
9 in compliance with the law of that state is effective for
10 purposes of [this act].

11 Section 12. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

-End-

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 18, 1985

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Judy Jacobson on Monday, March 18, 1985 in Room 410 of the State Capitol at 12:30.

ROLL CALL: All members were present with the exception of Senator Hager, who was excused. Senators Newman and Towe arrived late. Karen Renne, staff researcher, was also present.

There were many visitors in attendance. See attachments.

CONSIDERATION OF HOUSE BILL 228: Representative Cal Winslow of Billings, the chief sponsor of House Bill 228, gave a brief resume of the bill. This bill is an act authorizing the preparation and implementation of a declaration instructing an adult's physician to withhold or withdraw life sustaining procedures if the person is in a terminal condition and is unable to participate in medical treatment decisions; providing methods for revocation of the declaration; limiting the liability of physicians and health care providers who implement the declaration; and establishing criminal penalties for failing to comply with a declaration and for other related violations.

Twenty three states have some laws regarding living wills. Most of these states specifically exclude certain categories of persons from witnessing living wills such as: spouses or other relatives; heirs or claimants to any part of the declarant's will or estate; the declarant's physician or physician's employees; patient's health facility employees; or person responsible for the patient's health care costs.

States have recognized the need for restrictions to minimize or preclude the possibility of living wills being forged by those who would stand to gain financially by the premature death of the declarant.

Charles Briggs of the Office of the Governor, stood in support of the bill. He stated that this issue was one of the priorities of the Legacy Legislature. One must be allowed to die with dignity.

Sam Ryan, representing the Montana Senior Citizens, stood in support of the bill.

SENATE PUBLIC HEALTH
PAGE TWO
MARCH 18, 1985

Doug Olson, representing the Seniors' Office of Legal and Ombudsman Services, stood in support of the bill. He handed in written testimony to the committee for their consideration. See attachments.

Molly Munroe, a concerned citizens, stood in support of the bill. She stated that this is very necessary legislation. She suggested that the Committee consider an amendment which would change the effective date to July 1, 1985 instead of October 1, 1985.

Bill Leary, representing the Montana Hospital Association, stood in support of the bill as it passed the House.

Rose Skoogs, executive directors of the Montana Health Care Association, stood in support of the bill as it passed the House. She stated that the process has to be simple.

Wade Wilkinson, representing the Low Income Senior Citizens Advocacy, stood in support of the bill.

With no further proponents, the chairman called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Himsl asked about the two witnesses named on page three of the bill. He stated that he felt that it was necessary to have a relative involved also.

Representative Winslow closed. He stated that it is very, very important to pass this legislation, as it is important to terminally ill patients.

CONSIDERATION OF HOUSE BILL 466: Representative Jan Brown of Helena, the sponsor of HB 466, gave a brief resume of the bill. This bill is an act to include physical therapists under the physician, nurse, and hospital lien act.

Gordon Jones, a physical therapist from Helena, stood in support of the bill. Mr. Jones stated that this is a much needed bill.

Mike Pardis, of Helena stood in support of the bill. He offered some amendments which would include chiropractors in this bill. He was speaking on behalf of the chiropractors association.

SENIORS' OFFICE
LEGAL AND OMBUDSMAN SERVICES



TED SCHWINDEN, GOVERNOR

P.O. BOX 232
CAPITOL STATION

STATE OF MONTANA

(406) 444-4616
1-(800) 332-2272

HELENA, MONTANA 59620

March 18, 1985

Senators
Senate Public Health Committee
49th Legislative Session
State Capitol
Helena, Montana 59620

re: House Bill 228
Living Will

Dear Madam Chairman & Committee Members:

My name is Doug Olson and I am the attorney-elderly legal services developer with the Seniors' Office of Legal and Ombudsman Services, here in Helena. One of my responsibilities is to work with Senior citizen organizations and individual senior citizens to help them draft legislation for their Legacy Legislature. This past year I assisted Vi Thomson, a member of the Governor's Advisory Council on Aging and a Legacy Legislature Senator, with the drafting of a Living Will bill, Bill #18. This bill passed the Legacy Legislature with the result that several legislators requested that the Legislative Council draft proposed legislation on this topic.

House Bill 228 was finally introduced by Rep. Winslow regarding this topic. Instead of using the Legacy Legislature bill proposal, Rep. Winslow introduced a proposed Model Uniform State Law that will not be voted upon for approval or rejection by the National Commissioners on Uniform State Laws until August of this year at the earliest.

The bill as introduced by Rep. Winslow is acceptable and compatible with the Legacy Legislature Bill #18 in my opinion except insofar as HB 228 contains no restrictions on who may serve as witnesses to a declarant's statement (living will). Of the 23 states that have adopted state laws recognizing living wills to date, I believe that all of them place some restrictions on who may serve as a witness. Most of these states specifically exclude certain categories of persons from witnessing living wills such as: spouses or other relatives; heirs or claimants to any part of the declarant's will or estate; the declarant's physician or physician's employees; patient's health facility employees; or a person responsible for the patient(declarant)'s health care costs.

Letter to Senate Public Health Committee
re: House Bill 228
March 18, 1985
Page 2

The few remaining states that do not have these specific provisions require that the living will be executed with the same formalities as a person's will.

States have recognized the need for restrictions to minimize or preclude the possibility of living wills being forged by those who would stand to gain financially by the premature death of the declarant. I would urge you to carefully consider this issue and to follow the lead of all the states that have acted thus far by placing some restrictions on who may witness a living will.

For your benefit, I have copied an article that appeared in the January/February 1985 issue of Geriatric Nursing that highlights the provisions contained in living wills recognized in the 23 states that have acted thus far. I believe that you will find it interesting and a compelling reason to adopt some restrictions on witnesses in House Bill 228.

Regardless of your decision, I would urge you to take favorable action on House Bill 228 to formally recognize a living will in Montana. Thank you.

Sincerely,

Douglas B. Olson
Attorney
Seniors' Office

Attachment

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/18/85

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
6 SENATOR JUDY JACOBSON, CHAIRMAN	✓		
5 SENATOR J. D. LYNCH, V. CHAIRMAN	✓		
42 SENATOR TOM HAGER			✓
30 SENATOR MATT HIMSL	✓		
17 SENATOR TED NEWMAN	late		
45 SENATOR BILL NORMAN	✓		
14 SENATOR STAN STEPHENS	✓		
26 SENATOR TOM TOWE	late		

Each day attach to minutes.

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Spencer H. H. H.	Grass Range N.S.	022803	✓	
M. A. A. A.	Grass Range	"		
K. H. H. H.	Eastern Seal	214	✓	
J. H. H. H.	Baker High			
K. H. H. H.	H)			
Michael Fullman	DIST IV HRDC	HB 730	✓	
Dr. J. M. H. H.	Boston School of Leadership	HB 214	✓	
W. H. H. H.	Benito (H. H.)		✓	
Joan R. H. H.	"		✓	
Sam. H. H. H.	Mont. Senior Citizens League	HB 228	✓	
Kathleen E. H.		HB 730	✓	
Don. H. H. H.	Seniors Office Legal Services	HB 228	✓	
W. H. H. H.	MONTANA	HB 228	✓	
Mary McCick	Carroll College			
J. H. H. H.	"			
J. H. H. H.	Art Medical Assoc	HB 228	✓	
J. H. H. H.	MontPILB	HB 730	✓	
WADE WILKISON	LISCA	HB 730	✓	
WADE WILKISON	LISCA	HB 228	✓	
Charles B. H.	Governor's Office	HB 228	✓	
Charles B. H.	Governor's Office	HB 730	✓	
Philip H. H.	Self			
Henry H. H.	Self			

(Please leave prepared statement with Secretary)

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
MONTANA STATE SENATE

MARCH 23, 1985

The meeting of the Senate Public Health, Welfare and Safety Committee was called to order by Chairman Judy Jacobson on Saturday, March 23, 1985 in Room 410 at 8:00 a.m. to take executive action.

ROLL CALL: All members were present. Karen Renne, staff researcher, was also present.

ACTION ON HOUSE BILL 214: Representative Ron Miller of Great Falls, the sponsor of this bill, introduced it at the request of the Board of Speech Pathologists and Audiologists. HB 214 is an act providing for the registration of speech pathology aides; providing for annual registration fees, changing the license renewal date, and providing an effective date.

A motion was made by Senator Stephens that HB 214 BE CONCURRED IN. Motion carried.

Senator Stephens will carry this bill on the floor of the Senate.

ACTION ON HOUSE BILL 228: Representative Cal Winslow of Billings is the chief sponsor of House Bill 228. This bill is an act authorizing the preparation and implementation of a declaration instructing an adult's physician to withdraw life-sustaining procedures if the person is in a terminal condition and is unable to participate in medical treatment decisions; providing methods for revocation of the declaration limiting the liability of physicians and health care providers who implement the declaration; and establishing criminal penalties for failing to comply with a declaration and other other related violations.

A motion was made by Senator Lynch that HB 214 BE CONCURRED IN. Motion carried.

Senator Christiaens will carry this bill on the floor of the Senate.

STANDING COMMITTEE REPORT

MARCH 23, 1935

MR. PRESIDENT

We, your committee on.....Public Health, Welfare and Safety.....

having had under consideration.....House..... No. 228.....

third..... reading copy (blue)
color

LIVING WILLS

WINSLOW (CHRISTIAENS)

Respectfully report as follows: That.....House..... No. 228.....

~~XXXXXX~~
DO PASS

~~XXXXXXXX~~
DO NOT PASS

BE CONCURRED IN

.....
Senator Judy Jacobson

Chairman.

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/23/

SENATE
SEAT

NAME	PRESENT	ABSENT	EXCUSED
6 SENATOR JUDY JACOBSON, CHAIRMAN	✓		
5 SENATOR J. D. LYNCH, V. CHAIRMAN	✓		
42 SENATOR TOM HAGER	✓		
30 SENATOR MATT HIMSL	✓		
17 SENATOR TED NEWMAN	✓		
45 SENATOR BILL NORMAN	✓		
14 SENATOR STAN STEPHENS	✓		
26 SENATOR TOM TOWE	✓		

Each day attach to minutes.

1 HOUSE BILL NO. 228

2 INTRODUCED BY WINSLOW, CHRISTIAENS, R. MANNING,

3 FRITZ, BERGENE, BRANDEWIE, SCHULTZ, COBB, HARP,

4 SCHYE, QUILICI, MENAHAN, HAGER, B. BROWN,

5 HART, NEUMAN, J. BROWN, MILES, D. BROWN,

6 REGAN, KEENAN, O'HARA, H. HAMMOND, JACK MOORE

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE
9 PREPARATION AND IMPLEMENTATION OF A DECLARATION INSTRUCTING
10 AN ADULT'S PHYSICIAN TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING
11 PROCEDURES IF THE PERSON IS IN A TERMINAL CONDITION AND IS
12 UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS;
13 PROVIDING METHODS FOR REVOCATION OF THE DECLARATION;
14 LIMITING THE LIABILITY OF PHYSICIANS AND HEALTH CARE
15 PROVIDERS WHO IMPLEMENT THE DECLARATION; AND ESTABLISHING
16 CRIMINAL PENALTIES FOR FAILING TO COMPLY WITH A DECLARATION
17 AND FOR OTHER RELATED VIOLATIONS."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:20 THERE IS A NEW MCA SECTION THAT READS:21 Section 1. Short title. [Sections 1 through 11] may be
22 cited as the "Montana Living Will Act".23 Section 2. Definitions. As used in [this act], the
24 following definitions apply:

25 (1) "Attending physician" means the physician selected

1 by or assigned to the patient, who has primary
2 responsibility for the treatment and care of the patient.3 (2) "Declaration" means a document executed in
4 accordance with the requirements of [section 2 3].5 (3) "Health care provider" means a person who is
6 licensed or otherwise authorized by the law of this state to
7 administer health care in the ordinary course of business or
8 practice of a profession.9 (4) "Life-sustaining procedure" means any medical
10 procedure or intervention that, when administered to a
11 qualified patient, will serve only to prolong the dying
12 process.13 (5) "Physician" means a person licensed under Title
14 37, chapter 3, to practice medicine in this state.15 (6) "Qualified patient" means a patient who has
16 executed a declaration in accordance with [this act] and who
17 has been determined by the attending physician to be in a
18 terminal condition.19 (7) "Terminal condition" means an incurable or
20 irreversible condition that, without the administration of
21 life-sustaining procedures, will, in the opinion of the
22 attending physician, result in death within a relatively
23 short time.24 Section 3. Declaration relating to use of
25 life-sustaining procedures. (1) Any competent adult may

1 execute a declaration at any time directing that
 2 life-sustaining procedures be withheld or withdrawn.
 3 However, the declaration is effective only if the
 4 declarant's condition is determined to be terminal and the
 5 declarant is not able to make treatment decisions. The
 6 declaration must be signed by the declarant, or another at
 7 the declarant's direction, in the presence of two witnesses.
 8 ~~ONLY ONE OF THE TWO WITNESSES MAY BE RELATED TO THE~~
 9 ~~DECLARANT.~~ A physician or health care provider may presume,
 10 in the absence of actual notice to the contrary, that the
 11 declaration complies with [this act] and is valid.

12 (2) It is the responsibility of the declarant to
 13 notify his physician of the declaration. A physician or
 14 other health care provider who is provided a copy of the
 15 declaration shall make it a part of the declarant's medical
 16 records.

17 (3) A declaration may, but need not, be in the
 18 following form:

19 DECLARATION

20 If I should have an incurable or irreversible condition
 21 that will cause my death within a relatively short time, it
 22 is my desire that my life not be prolonged by administration
 23 of life-sustaining procedures. If my condition is terminal
 24 and I am unable to participate in decisions regarding my
 25 medical treatment, I direct my attending physician to

1 withhold or withdraw procedures that merely prolong the
 2 dying process and are not necessary to my comfort or freedom
 3 from pain. IT IS MY INTENTION THAT THIS DECLARATION SHALL BE
 4 VALID UNTIL REVOKED BY ME.

5 Signed this _____ day of _____, ____.

6 Signature _____

7 City, County, and State of Residence _____

8 The declarant is known to me and voluntarily signed
 9 this document in my presence.

10 Witness _____

11 Address _____

12 Witness _____

13 Address _____

14 Section 4. Revocation of declaration. (1) A
 15 declaration may be revoked at any time and in any manner by
 16 which the declarant is able to communicate his intent to
 17 revoke, without regard to mental or physical condition. A
 18 revocation is effective only as to the attending physician
 19 or any health care provider acting under the guidance of
 20 that physician upon communication to the physician or health
 21 care provider by the declarant or by another to whom the
 22 revocation was communicated.

23 (2) The attending physician or health care provider
 24 shall make the revocation a part of the declarant's medical
 25 record.

Section 5. Recording determination of terminal condition and content of declaration. When an attending physician who has been notified of the existence and content of a declaration determines that the declarant is in a terminal condition, the physician shall record that determination and the content of the declaration in the declarant's medical record.

Section 6. Treatment of qualified patients. (1) A qualified patient has the right to make decisions regarding use of life-sustaining procedures if the patient is able to do so. If a qualified patient is not able to make such decisions, the declaration governs decisions regarding use of life-sustaining procedures.

(2) [This act] does not prohibit the application of any medical procedure or intervention, including the provision of nutrition and hydration, considered necessary to provide comfort care or to alleviate pain.

(3) The declaration of a qualified patient known to the attending physician to be pregnant must be given no effect if it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures.

Section 7. Transfer of patients. (1) An attending physician who is unwilling to comply with the requirements of [section 4 5] or who is unwilling to comply with the

declaration of a qualified patient in accordance with [section 5 6] shall take all reasonable steps to transfer the declarant to another physician.

(2) If the policies of a health care facility preclude compliance with the declaration of a qualified patient under [this act], that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of [this act] can be carried out.

Section 8. Immunities. (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of [this act], are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) the health care facility in which the withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under [this act] that are in accord with reasonable medical standards.

Section 9. Penalties. (1) A physician who willfully

1 fails to transfer in accordance with [section 6 7] is guilty
2 of a misdemeanor punishable by a fine not to exceed \$500 or
3 imprisonment in the county jail for a term not to exceed 1
4 year, or both.

5 (2) A physician who willfully fails to record the
6 determination of terminal condition in accordance with
7 [section 4 5] is guilty of a misdemeanor punishable by a
8 fine not to exceed \$500 or imprisonment in the county jail
9 for a term not to exceed 1 year, or both.

10 (3) A person who purposely conceals, cancels, defaces,
11 or obliterates the declaration of another without the
12 declarant's consent or who falsifies or forges a revocation
13 of the declaration of another is guilty of a misdemeanor
14 punishable by a fine not to exceed \$500 or imprisonment in
15 the county jail for a term not to exceed 1 year, or both.

16 (4) A person who falsifies or forges the declaration
17 of another or purposely conceals or withholds personal
18 knowledge of a revocation as provided in [section 3 4], with
19 the intent to cause a withholding or withdrawal of
20 life-sustaining procedures, is guilty of a misdemeanor
21 punishable by a fine not to exceed \$500 or imprisonment in
22 the county jail for a term not to exceed 1 year, or both.

23 Section 10. Reservations on effect of [act].

24 (1) Death resulting from the withholding or withdrawal of
25 life-sustaining procedures pursuant to a declaration and in

1 accordance with [this act] is not, for any purpose, a
2 suicide or homicide.

3 (2) The making of a declaration pursuant to [section 2
4 3] does not affect in any manner the sale, procurement, or
5 issuance of any policy of life insurance, nor does it modify
6 the terms of an existing policy of life insurance. No policy
7 of life insurance is legally impaired or invalidated in any
8 manner by the withholding or withdrawal of life-sustaining
9 procedures from an insured qualified patient,
10 notwithstanding any term of the policy to the contrary.

11 (3) No physician, health care facility, or other
12 health care provider and no health care service plan,
13 insurer issuing disability insurance, self-insured employee
14 welfare benefit plan, or nonprofit hospital plan may require
15 any person to execute a declaration as a condition for being
16 insured for or receiving health care services.

17 (4) [This act] creates no presumption concerning the
18 intention of an individual who has not executed a
19 declaration with respect to the use, withholding, or
20 withdrawal of life-sustaining procedures in the event of a
21 terminal condition.

22 (5) Nothing in [this act] increases or decreases the
23 right of a patient to make decisions regarding use of
24 life-sustaining procedures if the patient is able to do so
25 or impairs or supersedes any right or responsibility that

1 any person has to effect the withholding or withdrawal of
2 medical care in any lawful manner. In that respect, the
3 provisions of [this act] are cumulative.

4 (6) [This act] does not authorize or approve mercy
5 killing ~~or-euthanasia~~.

6 Section 11. Recognition of declarations executed in
7 other states. A declaration executed in a manner
8 substantially similar to [section 2 3] in another state and
9 in compliance with the law of that state is effective for
10 purposes of [this act].

11 Section 12. Severability. If a part of this act is
12 invalid, all valid parts that are severable from the invalid
13 part remain in effect. If a part of this act is invalid in
14 one or more of its applications, the part remains in effect
15 in all valid applications that are severable from the
16 invalid applications.

-End-